IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Crl. Misc. No.39372 of 2006

Date of decision: November 17, 2006

Ved Parkash Kharey Vs. State of Haryana

CORAM: **Hon'ble Mr. Justice Virender Singh**

Present: Mr. Manoj Bajaj, Advocate, for the petitioner.

Mr. Dinesh Arora, AAG, Haryana.

Virender Singh, J.

through the instant petition, the petitioner who was booked in a case FIR No.801 dated 18.9.2004, registered at Police Station NIT Faridabad, under Section 304-B IPC, is praying for quashing of the order dated 26th June, 2006 (Annexure P-5) vide which the bail bonds furnished by him during the pendency of the trial were forfeited to the State.

At the very outset Mr. Manoj Bajaj has submitted that the petitioner has since been convicted by the learned trial Court under Section 304-B IPC and against his conviction he has preferred an appeal bearing No.1664-SB of 2006 which already stands admitted. He then contends that vide order dated October 12, 2006 (Annexure P-8), the substantive sentence imposed upon the petitioner has been

suspended for a period of three months by this Court only on medical grounds as he is a patient of severe back pain for which he had to undergo a major surgery from a Neuro Surgeon of Sir Ganga Ram Hospital, New Delhi.

Adverting to the facts of the present petition, Mr. Bajaj submits that the petitioner had moved an application before the learned trial Court for interim bail on medical grounds and the learned Additional Sessions Judge, Faridabad vide order dated 27.5.2006 had granted him the interim bail for one month in the sum of Rs.1.00 lac with one surety in the like amount. Pursuant to the said order, the petitioner had deposited his two FDRs before the concerned Court at the time of his furnishing bail bonds. Mr. Bajaj then contends that the petitioner was to be operated upon for his major surgery by the concerned doctor of Sir Ganga Ram Hospital for which he was admitted on 22.6.2006 and moved an application before the learned Sessions Judge, Faridabad for extension of the interim bail but the same was declined vide order dated 26.6.2006 primarily on the ground that the conduct of the petitioner was malafide. While declining the prayer of the petitioner for extension of interim bail, the learned Sessions Judge vide impugned order dated 26.6.2006 also cancelled the bail bond earlier submitted by the petitioner and issued non-bailable warrants against him. The petitioner thereafter knocked the doors of this Court vide Crl. Misc. No.37390 of 2006 for grant of interim bail on medical grounds alone and vide order dated July 13,

2006 (Annexure P-7), the petitioner was released on interim bail for a period of 30 days on his depositing a sum of Rs.50,000/- at the time of furnishing bail bonds before the concerned Court. The deposit of the said amount was the subject matter of the proceedings initiated against the petitioner under Section 446 of Cr.P.C. The learned counsel submits that it was also made clear in the aforesaid order (Annexure P-7) that the deposit of the said amount also shall also be subject to the final decision of the instant petition. According to the learned counsel the amount of Rs.50,000/- was deposited by the petitioner pursuant to the order of this Court.

Giving the entire flashback of the case Mr. Bajaj submits that the learned Sessions Judge while passing the impugned order completely ignored the earlier orders passed by the learned trial Court whereby the petitioner was granted the concession of interim bail on medical ground. He then submits that there was no malafide on the part of the petitioner for being absent from the proceedings but for the unavoidable circumstances as he was unable to move. The learned counsel then submits that the petitioner had suffered a spinal injury for which he had to undergo a very major surgery in a reputed hospital. He had admitted himself on 22nd June, 2006 and positively he could not be present on 26.6.2006, the date fixed before the Court. Strengthening his arguments, the learned counsel submits that even after the petitioner has suffered conviction, his sentence has been suspended for a short period on medical grounds only vide detailed

order dated October 12, 2006 (Annexure P-8). All these facts speak volumes of the bonafide of the petitioner who had prayed for extension of the time but the learned Sessions Judge declined the same observing that the conduct of the petitioner is malafide. According to the learned counsel, the impugned order is not sustainable in the light of the aforesaid genuine facts and as such it deserves to be quashed in the interest of justice.

In support of his arguments, Mr. Bajaj has relied upon an order of this Court (Annexure P-6) passed in Criminal Misc. No.33878-M of 1998 in which the order of cancellation of bail was quashed.

The State has also filed a reply to the instant petition which has been perused by me. Mr. Arora has vehemently opposed the prayer.

After hearing learned counsel for both sides and perusing the entire record, especially the impugned order, I find considerable substance in the submissions advanced by Mr. Bajaj. The flashback of the entire case speaks volumes of the fact that the case of the petitioner was of spinal injury for which he has already undergone a major surgery. In order dated July 13, 2006 (Annexure P-7) vide which the petitioner was granted interim bail by this Court, the ailment of the petitioner has been discussed in detail. The fact that he has been granted interim suspension of sentence even after conviction on medical grounds, can also be considered in his favour to conclude

that the bonafides projected by the petitioner before learned Sessions Judge for extension of the interim bail, were absolutely genuine and there was no malafide in his conduct. In my view, the finding of the learned Sessions Judge that the petitioner had abused and misused the concession of interim bail is not correct. From the totality of facts and circumstances it can be construed that there was no deliberate attempt on the part of the petitioner for prolonging the trial or not to appear before the Court. Therefore, in my view, the impugned order deserves to be quashed.

Resultantly, the instant petition is allowed, the impugned order (Annexure P-5) dated 26.6.2006 vide which the bail bonds furnished by the petitioner during pendency of the trial were ordered to be stayed, is quashed. The FDRs submitted by the petitioner at the time of furnishing the bail bonds and are still attached with the main file, be returned to the petitioner without any delay. The amount in cash, if any, deposited by the petitioner shall also be returned to him.

The instant petition is disposed of accordingly.

(VIRENDER SINGH)
JUDGE

November 17, 2006
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